IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

No. 20440

ASSINIBOINE AND SIOUX TRIBES, *Appellants*,

v.

R. E. NORDWICK, ET AL., *Appellees*.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA

REPLY BRIEF

MARVIN J. SONOSKY,
1225—19th Street, N. W.,
Washington, D. C. 20036,
Attorney for the Appellants.

Of Counsel:

JOHN M. SCHILTZ, Esquire,
Electric Building,
Billings, Montana.

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Citations

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This is the position of the Tribes:

1. At the time of the 1927 Act the United States owned the oil and gas in trust for the Tribes. (Tribes' Br. 2-3.) [1]

2. In the 1927 Act, the United States specifically reserved the oil and gas in "undisposed of" lands to the Tribes. There was no savings clause for entrymen. (See Tribes' Br. 14, fn. 3.)

3. At the time of the 1927 Act, the only lands disposed of were those where the entryman had fulfilled all statutory requirements and had thus earned his right to the

[1] The Tribes' opening brief will be cited throughout as "(Tribes' Br.)."

title. Until the entryman earned the right to title, he had no rights, as against the United States, either to the surface or to the oil and gas. (See *infra,* p. 4, fn. 3.)

4. It was in this frame of reference that Congress reserved to the Tribes their own oil and gas for leasing, rather than continue complete alienation under the homestead laws. The entryman had no right whatsoever in the oil and gas before the 1927 Act and received none by virtue of that Act. Language reserving oil and gas to the Tribes is not language conferring rights in oil and gas on entrymen.

5. The court below has held that the 1927 Act did reserve the oil and gas for the Tribes in lands entered before, but not after that Act. This decision necessarily reads into the 1927 Act an intent by Congress to reserve only part of the Tribes' oil and gas for leasing (i.e., post-1927 Act entries) and to confer the remainder of the Tribes' oil and gas on such pre-1927 Act entries as might, at some future date earn the right to title. Nothing in the language, legislative history, or administrative construction, supports this distinction between pre- and post-1927 Act entries.

The appellees undertake to establish that in the 1927 Act Congress did intend to distinguish between pre-1927 and post-1927 Act entries, did intend to divest the Tribes of their oil and gas, and did confer the oil and gas on the pre-1927 entryman, if and when he earned title.

Appellees do not point to any language in the 1927 Act or any legislative history to support their position. They avoid dealing with the 1927 Act as an Indian statute. They endeavor to escape the public land law definition of the critical phrase "undisposed of" as meaning divestiture of title. They seek to import the meaning of "undisposed of", as used in other statutes where Congress was not exercising its power to withdraw land under entry from public land disposition.

We deal with appellees' arguments following the order of the appellees' brief.

I

A. We agree with the appellees that the prime question is the meaning of the words "undisposed of" in the 1927 Act and that the intent of Congress controls. We say that the 1908 Act and its 1927 amendment are Indian statutes to be construed favorably to the Tribes in accordance with the standards controlling the interpretation of such statutes. (Tribes' Br. 15-17.) The appellees make no answer to this.

B. The appellees offer no reason for construing the 1927 Act to divest the Tribes of part of their oil and gas. They suggest no reason why Congress should be charged with donating tribal oil and gas to entrymen, who had merely declared their intent to acquire title but had not fulfilled the conditions giving them the right to title and who had no rights in the lands as against the United States (*infra*, p. 4, fn. 3). Appellees advance no reason why the 1927 Act should be construed to charge Congress with conferring less protection on lands held by the United States in trust, than to the Government's own lands.[2] (Tribes' Br. 11-12.)

It would take unmistakeably clear language to divest the Tribes of their oil and gas in favor of incipient entries, when Congress was pursuing the opposite policy with lands of the United States. There is no such language. The

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[2] The Mineral Leasing Act of 1920, governing lands owned by the United States, specifies that "Deposits of * * * oil * * * or gas, and lands containing such deposits owned by the United States, * * * shall be subject to disposition" by leasing. (30 U.S.C. 181.) Minerals on public land under entry became subject to leasing as lands owned by the United States. It took affirmative statutory language to give pre-1920 Act entrymen any relief, and that was by way of a preferential right to lease, not a grant of title. (Section 20 of the Mineral Leasing Act (30 U.S.C. 229).) *Skeen* v. *Lynch*, 48 F.2d 1044, 1047 (C.A. 10, 1931) certiorari denied 284 U.S. 633; *Charles R. Haupt*, 47 L.D. 588, 589 (1920).

words "undisposed of" are not words to carry out such an intent. On the contrary, they are words of broad scope affirmatively establishing that oil and gas owned by the Tribes on the date of the 1927 Act, were specifically reserved to the Tribes.

C. When Congress directed that the Tribes' lands be "disposed of" in Section 7 of the 1908 Act, it used those words to mean complete alienation. And in Section 8, Congress spelled out the point at which there was complete alienation—when the entryman satisfied all requirements of settlement, improvement and payment entitling him to a patent. (Tribes' Br. 3, 10, 38.) This meaning of "undisposed of" did not change when Congress used the phrase in the 1927 amendment "specifically reserving" oil and gas in tribal lands. It meant, where title had not yet been earned.

The words "disposed of" and "undisposed of" in Section 7 of the 1908 Act and in the 1927 Act, were simply expressive of an ancient rule of public land law—that an entryman acquires no rights against the Government until he has fulfilled the conditions required by the law,[3] and, until that is done, Congress is free to withdraw the land from sale or to grant it to other parties. As noted by the Supreme Court, an entryman is one who has taken the

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[3] In 1870 the Supreme Court characterized this as the "recognized rule of action in that [Land] department." *Frisbie* v. *Whitney,* 9 Wall. 187, 195-196 (1870). The Supreme Court repeatedly reiterated and explicitly reconfirmed the rule. *Hutchings* v. *Low* (Yosemite Valley cases), 15 Wall. 77, 86-88 (1872); *Campbell* v. *Wade,* 132 U.S. 34, 37-38 (1889); *Whitney* v. *Taylor,* 158 U.S. 85, 95 (1895). In the last named case, the Court stated that a homestead entry "practically amounts to nothing more than a declaration of intention." To the same effect, see *Russian-American Packing Co.* v. *United States,* 199 U.S. 570, 577-578 (1905); *Payne* v. *Central Pacific R. Co.,* 255 U.S. 228, 234-235 (1921). Also, see Tribes' Br. 17-19. The homestead entryman has no right to remove timber from an unperfected entry beyond that necessary for cultivation or improvement, *Shiver* v. *United States,* 159 U.S. 491, 497-498 (1895); or to remove sand and gravel, *Litch* v. *Scott,* 40 L.D. 467, 469 (1912). Certainly he had no right to the oil and gas.

initial steps to obtain title by *future* compliance with the law. Until there is compliance with the law (sec. 8 of the 1908 Act), he has no title. *Payne* v. *Central Pacific R. Co.*, 255 U.S. 228, 234-235 (1921); also cases cited in footnote 3, *supra*. On the date of the 1927 Act, Nordwick had taken only the initial steps. He did not earn title until 1935.

D. The appellees do not wish the Court to apply public land law. This is understandable. As noted, under public land law, where Congress is withdrawing lands or granting them to another, the words "undisposed of" mean a divestiture of title—a complete alienation. Appellees do not deny this. They would avoid it by saying "We are not concerned with public land concepts * * *." (Appellees' Br. 6.) But once the Tribes' trust lands were classified and appraised, public land law governed. Section 7 of the 1908 Act specified that the Tribes' lands "shall be disposed of under the general provisions of the homestead, desert-land, mineral and townsite laws of the United States, * * *." Section 8 explicitly required the entryman to comply "with all the requirements of the homestead law * * *" as one of the requisites to earning title. (Tribes' Br. 3, 36, 38.) Those are public land laws administered by the General Land Office, later the Bureau of Land Management. They controlled the rights of entrymen, including Nordwick. The point at which the Tribes' lands were "disposed of" under the homestead, desert-land, mineral and townsite laws must be tested by public land law concepts. Appellees cannot escape this.

E. Appellees are silent on the point that the 1908 Act and the 1927 Act are Indian statutes and must be construed as Indian statutes so far as the Tribes' rights are concerned. (Tribes' Br. 15-17.) Appellees are driven to advise the Court to forget about Indian law and public land law and to interpret the 1927 Act on the basis of how "disposed of" or "undisposed of" was used in cases involving commercial contracts, wills, tax statutes and the like. (Appellees' Br. 5.)

II

A. Appellees advance the argument that the use of the words "undisposed of" in Section 11 of the 1908 Act, establishes that the same phrase did not mean divestiture of title when used in a totally different context nineteen years later in the 1927 Act. (Appellees' Br. 8-9.) Legislation cannot correctly be construed in this fashion. Words must be read and interpreted in the context of the objective Congress sought to accomplish. *Securities & Exch. Com.* v. *Joiner Leasing Corp.*, 320 U.S. 344, 350-351 (1943). They are not mechanically transferable from one statute to another, or between sections of the same statute.

Section 11 of the 1908 Act, unlike the 1927 Act, was designed for the sale of land, not the withdrawal of land from sale. Section 11 used both "undisposed of" and "unsold" in the same sentence and treated both as meaning "unsold." In the same sentence, Section 11 specified that lands "undisposed of" at the end of five years were to be *"sold"* to the highest bidder with a minimum price of $1.25 per acre, while lands *"unsold"* at the end of ten years were to be *"sold"* to the highest bidder, without any minimum. Read in context with the purpose of Section 11, it is plain that "undisposed of" for five-year lands and "unsold" for ten-year lands were used synonymously. Congress was dealing with unsold lands in both instances. This was the administrative construction announced in 1918. *Lands Within Former Fort Peck Reservation,* 46 L.D. 380 (1918). (Appellees' Br. 9-11.)

The objective of the 1927 Act was completely foreign to that of Section 11 of the 1908 Act. The 1927 Act was designed to retain the tribal oil and gas for disposal by lease. In the 1927 Act, the United States was simply extending to trust land, the same leasing policy it had adopted for its own public land through the Mineral Leasing Act of 1920. (Tribes' Br. 11-12; *supra,* fn. 2.)

The phrase "undisposed of" must be tested against this

background, coupled with the fact that the oil and gas was trust property belonging to the Tribes on the date of the 1927 Act. So tested, there is nothing to support the view that Congress used the phrase "undisposed of" in the 1927 Act as a means of reserving part of the Tribes' oil and gas for leasing (post-1927 Act entries) and of donating the rest of the Tribes' oil and gas to those pre-1927 Act entrymen, who at some future date might earn the right to title. (Tribes' Br. 24-27.)

B. In the same tenor, appellees refer to the phrases "undisposed of" and "disposed of" in two other statutes, one the Appropriation Act of August 1, 1914, c. 222, sec. 9, 38 Stat. 582, the other, the Act of February 27, 1917, c. 133, 39 Stat. 944, 30 U.S.C. 86-89. (Appellees' Br. 11-13.) Both deal with the disposition of land, not with the power to withdraw land from disposition exercised in the 1927 Act.

The 1914 Act permitted allotments to Fort Peck Indians from "undisposed of" "surplus" lands. Again, in context with the legislative scheme, it would be irrational to say Congress intended to dispossess entrymen in order to permit Indians to select from lands under entry. But that meaning of "undisposed of" cannot be imported into the 1927 Act, designed to remove the Tribes' own oil and gas from disposition except by leasing. The reservation of oil and gas for leasing, did not and could not create any conflicts, or in any manner affect any rights of the entryman, possessory or otherwise. (See Tribes' Br. 27.)

C. The 1917 Act invoked by appellees simply has no application. (Appellees' Br. 12-13.) The 1917 Act was a statute of general application permitting "surplus" Indian land which was classified as coal, and not otherwise "disposed of," to be opened to agricultural entry with the coal reserved to the United States. The administrative construction on which appellees rely did not turn on the meaning of "disposed of" but on the familiar principle of statutory construction that a special statute (1908 Act for Fort

Peck) controls over a general statute (1917 Act for all Indian reservations). (See Tribes' Br. 27-28.)

D. The appellees refer to the legislative history of the 1927 Act. (Appellees' Br. 13-14.) Appellees would make much of the change from "not disposed of" in the bill as introduced, to "undisposed of" in the bill as enacted into law. The change had no significance whatsoever. Nothing in the legislative history lends credence to appellees' suggestion that the change was deliberately made to insure that "undisposed of" in the 1927 Act would have the same meaning as "undisposed of" in the sale provisions of Section 11 of the 1908 Act, or in the allotment provisions of the 1914 Appropriation Act.

The important thing is that, as confirmed by legislative history, the dominating purpose of the 1927 Act was to halt alienation, except by lease, of the oil and gas interests owned by the Tribes. (Tribes' Br. 11-15.) And on the date of the 1927 Act the Tribes owned the oil and gas in all land under entry where the entryman had not earned the right to title. This includes the land in suit. (*Supra*, p. 4, fn. 3.)

E. Appellees overstate the instructions contained in a letter of January 18, 1929, from the Commissioner of the General Land Office to the local register. Appellees erroneously recite that the "letter states that the reservation of oil and gas provided by the 1927 Act is to be effective to *only* future applications for homestead entries on Fort Peck lands." (Emphasis supplied.) (Appellees' Br. 14.)

The Commissioner's letter is set out in *Circulars and Regulations of the General Land Office*, pp. 715-716 (GPO 1930). From the text of the letter it appears that instructions had earlier been issued "requiring that all homestead entries embracing Fort Peck lands be made subject to the provisions" of the 1927 Act, but that the local register had not received those instructions. Accordingly, the 1929 letter instructed the register that: "In the future in *all*

applications for homestead entries of Fort Peck lands or *applications for reinstatement of cancelled entries of such lands,* you will require the applicant to file a consent to the reservation of the oil and gas to the Fort Peck Indians * * *." (Emphasis supplied.)

The instructions related to prospective applications. They did not, as appellees advise the Court, say that the 1927 reservation was to be effective *"only"* as to future applications. The instructions directed the register to require that applicants for entry who filed after the 1927 Act, consent to a reservation of oil and gas to the Tribes. The instructions also meant that the same consent was to be obtained when post-1927 Act applications were made for reinstatement of a cancelled entry.

The appellees read too much into the letter of instruction. And the same is true of the *obiter dictum* in 53 I.D. 544 (quoted by the appellees (Br. 14)), uttered by Interior's Solicitor to bolster his opinion in support of an Indian allotment. The instructions were dealing with applications for homestead entries *in futuro.* The substantive question of whether oil and gas were included or excluded from past entries was not present. There was no occasion to instruct with respect to such entries. In these circumstances, there is no warrant for treating the 1929 letter as administrative recognition of title to the oil and gas in pre-1927 Act unperfected entries.

If the appellees' analysis of the 1929 instructions were right, all pre-1927 entrymen would have been given the oil and gas. We know this was not done. The case at bar is an instance in point. Nordwick's patent reserved the oil and gas to the Tribes (Pl. Ex. 53). That was the administrative construction and practice. Significantly, the court below makes no reference to the 1929 letter.

F. Similarly, appellees read too much into the letter of March 29, 1930 from the General Land Office (Ex. 64) advising the register and receiver of the local land office to

note on the final certificate that oil and gas in the 80 acres adjudicated below was reserved to the Tribes. (Appellee's Br. 2, 14-15.)[4] The letter is silent as to a similar reservation for the 160 acres in suit. Appellees overstate the contents of the letter and convey the erroneous impression that the letter affirmatively instructed that oil and gas "was to be reserved *only* as to the additional entry [80 acres] and not the 160 acres concerned in the appeal." (Emphasis supplied.) (Appellees' Br. 14-15.)

The ultimate fact is that the final certificate and patent did reserve the oil and gas. The patent, the conclusive instrument of title, was issued in Washington where policy and administrative construction are established (Ex. 53). There is no warrant for appellees' assertion that the reservation of oil and gas in the final certificate and patent, came about "through clerical error." (Appellees' Br. 15.) There is no basis for contending the patent did not reflect the administrative position. Indeed, Nordwick was satisfied and made no complaint until after twenty years, when the land appeared to be valuable for oil and gas. (Tribes' Br. 4, 34-35.)

G. Appellees advance the allotment cases as evidencing that "undisposed of" means land not subject to entry. (Appellees' Br. 15.) Those cases establish the opposite. (Tribes' Br. 28-32.) They stand for the proposition that one who wishes to obtain title to federal land, must fulfill all the requisites of the law before the right to title vests in him. (See *supra*, p. 4, fn. 3.)

Each allotment case presented the question of whether the oil and gas passed to the allottee, or was reserved to the Tribes, under the 1927 Act. The answers depended on whether the land was "undisposed of" on the effective date of the allotment. Here the difference between a public

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[4] Appellees complain that the Tribes omitted reference to this letter in their opening statement (Appellees' Br. 2). But appellees fail to note that the letter was quoted and discussed where it fitted into the Tribes' argument. (Tribes' Br. 21.)

land entry and an allotment comes into play. An entry is the initial step of one who wishes to obtain the title to public land by future compliance with the law. Upon full compliance with the law, the entryman earns the right to title. Between the initial and concluding steps, the land is undisposed of and subject to Congressional withdrawal or grant to another. (See *supra,* p. 4, fn. 3.)

In the case of an allotment, the land is disposed of when an Indian makes his selection in the field and the selection is recorded on the allotment schedule. At that point the Indian has done all required of him and the right to title to the allotment is vested in him. In appellees' words, it is the equivalent of the "homestead entryman who has made full payment and final proof." (See Tribes' Br. 30, fn. 6.)

The Secretary applied this principle to the allotment cases. An allotment of irrigable land selected and approved *before* the 1927 Act, carried the oil and gas with it. An allotment of grazing land selected and approved *after* the 1927 Act was subject to oil and gas in the Tribes. *Raymond Bear Hill,* 52 L.D. 688 (1929). (Tribes' Br. 28-29.) An allotment selected and recorded on the allotment schedule *before* the 1927 Act, carried the oil and gas with it even though the schedule was approved after the 1927 Act. 53 I.D. 538, 544. (Tribes' Br. 30-31.)

In short, oil and gas did not pass until the Indian had done all required of him by law to receive title to the allotment. The equivalent in the case of an entryman is spelled out in Section 8 of the 1908 Act (Tribes' Br. 38): " * * * and when an entryman shall have complied with all the requirements of the homestead law and shall have submitted final proof * * * and shall have made all required payments aforesaid, he shall be entitled to a patent for the lands entered: * * *." Nordwick did not comply with those requirements until 1935,—eight years after the 1927 Act removed the oil and gas from disposition, except by leasing.

H. We take no issue with the rules of law governing the weight to be given the administrative construction of a statute. (Appellees' Br. 15-16.) But, administrative construction supports the Tribes' not appellees', position. In this case, the Land Office *contemporaneously* construed the 1927 Act to reserve the oil and gas to the Tribes. The Land Office title report on the land in suit, the final certificate and the patent all reserved oil and gas to the Tribes. (Tribes' Br. 20-21.) There is nothing to indicate this was the exception and not the rule.

In 1956, the Assistant Solicitor, Department of the Interior, expressed the Department's position, namely that the land in suit was undisposed of on the date of the Act. The Bureau of Land Management in the *ex parte* proceeding, issued Nordwick a supplemental patent to the oil and gas, in violation of the advice of the Assistant Solicitor acting in the exercise of power delegated by the Secretary of the Interior. The motivation for this singularly unconformable action by a subordinate Bureau of the Department remains inexplicable. Certainly, this action could not have been accomplished except *ex parte*. If the Tribes had been parties to the proceedings, an appeal to the Secretary would have exposed the Bureau's action. Nordwick was the moving party in that *ex parte* decision. Yet, the appellees are silent on the matter, just as they are silent on the administrative position expressed in the Assistant Solicitor's 1956 memorandum opinion. (See Tribes' Br. 21-22.)

III

The appellees undertake to raise a false alarm by asserting, without any proof whatsoever, that a large quantity of other lands may be affected. (Appellees' Br. 16-17.) The same contention was rejected below when made with respect to the 80 acres entered after the 1927 Act. This is not a ground for divesting the Tribes of their property.

Mr. Nordwick was an agricultural entryman. He took title in 1935 subject to oil and gas in the Tribes. He made no complaint or protest until after the land was deemed valuable for oil and gas, some twenty years later. Through the inexplicable *ex parte* proceedings, an exception violating established law, was unlawfully carved out for him. (Tribes' Br. 4-6, 33-35.)

Common sense dictates there is no substance to appellees' assertion of "widespread affect". First, where the entryman earned his right to title prior to the 1927 Act, oil and gas were not reserved to the Tribes. The land was first opened to entry on May 1, 1914, Presidential Proclamation of July 25, 1913, 38 Stat. 1952. It seems fair to assume that title to most of the land was earned in the thirteen years between May 1, 1914 and the 1927 Act.

Second, a large number of entries were made under the Stock-Raising Homestead Act of December 29, 1916, c. 9, 30 Stat. 862, as amended, 43 U.S.C. 291 et seq. Under Section 9 of that Act (43 U.S.C. 299), all minerals were reserved to the United States. Entrymen under that Act could not get title to the Tribes' oil and gas, even if there had been no 1927 Act. *Skeen* v. *Lynch,* 48 F.2d 1044 (C.A. 10, 1931), certiorari denied 284 U.S. 633; *Devearl W. Dimond,* 62 I.D. 260, 261-262 (1955). Since the United States was acting as trustee for the Tribes, minerals in stock-raising homesteads were held for the benefit of the Tribes. *Ownership of Minerals—Patented Indian Lands,* 59 I.D. 393, 395 (1947); *B. Leslie Zaerr,* Montana 014651 (September 3, 1957) (Gower Federal Service, BLM-1957-126.)[5]

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[5] All surplus lands at Fort Peck were withdrawn from all forms of sale or disposal by Secretarial order of September 19, 1934. *Restoration of Lands Formerly Indian to Tribal Ownership,* 54 I.D. 559, 563 (1934); *B. Leslie Zaerr,* Montana 014651, (September 3, 1957) (Gower Federal Service, BLM-1957-126).

Since Gower's Service may not be available to the Court, excerpts from the opinion in the *Zaerr* case are set out in the Appendix, p. 15, and three copies of the opinion are being lodged with the clerk. The decision also evidences the clear understanding of the Bureau of Land Management of the nature of the Tribes' interest in the oil and gas.

Without a complete examination of the title to all Fort Peck lands there is no way of saying with certainty that there are no other instances where oil and gas should have been, but were not, reserved to the Tribes. Following Mr. Nordwick's *ex parte* success in obtaining a supplemental patent for the oil and gas in 1955, at least one other application was filed similarly seeking the oil and gas in a homestead entry. *Karge,* GF 074447. That application is being held in suspense by the Department of the Interior pending the final outcome of this case. The undersigned has made inquiry of the Bureau of Land Management and has been advised that the *Karge* application is the only one on file.

Conclusion

That part of the judgment below, here on appeal, should be reversed with instructions as noted in the conclusion of our opening brief.

Respectfully submitted,

Marvin J. Sonosky,
1225—19th Street, N. W.,
Washington, D. C. 20036,
Attorney for the Appellants.

Of Counsel:

John M. Schiltz, Esquire,
Electric Building,
Billings, Montana.

April 1966.

Certification

I certify that in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

Marvin J. Sonosky.

APPENDIX

Excerpt From Decision of the Bureau of Land Management

B. Leslie Zaerr—Montana 014651—September 3, 1957

Manager's Decision Affirmed

Mr. B. Leslie Zaerr has appealed to the Director of the Bureau of Land Management from a decision of the Acting Manager of the Billings, Montana, Land Office. In that decision, dated June 13, 1955, Mr. Zaerr's offer to lease for oil and gas was rejected because the land is withdrawn by the order of September 19, 1934 and is in the Fort Peck Indian Reservation.

This land was originally a part of the surplus lands of the Fort Peck Indian Reservation, and was made subject to disposal under the general provisions of the homestead, desert land, mineral and town-site laws of the United States by the Act of May 30, 1908 (35 Stat. 558). Until disposed of according to law, the land remained the property of the Indians. *Ash Sheep Company* v. *United States,* 252 U.S. 159 (1920). When sold, the proceeds of the sale were required to be deposited to the Treasury to the credit of the Indian Tribe. It was the intention of this statute that the United States should act as trustee for the Indians. The equitable title to the land was therefore vested in the Indians, subject to the trusteeship of the United States.

The particular tract embraced within the appellant's offer to lease was patented pursuant to the Stockraising Homestead Act of December 29, 1916, 43 U.S.C., 1952 ed., secs. 291-301. The patent reserved to the United States the minerals in the land, together with the right to prospect for, mine, and remove the minerals.

The appellant contends that the land ceased to be within the Fort Peck Indian Reservation at the time it was patented, and that the reservation of minerals was not for the benefit of the tribe, but for the benefit of the United States, which can, therefore, dispose of the minerals in accordance with the applicable laws.

The Act of May 30, 1908, *supra,* contains no indication of an intent to extinguish the interest of the Indians in the mineral estate. On the contrary, section 12 of the Act provides that the surplus lands of the Fort Peck Reservation shall be subject to exploration, location and purchase under the general provisions of the United States mineral and coal land laws, and section 13 provides that the United States shall act as trustee for the Indians, and pay over to them the proceeds received from the sale of the land.

It is therefore clear that Congress intended the United States to hold the title to the surface and to the underlying minerals in trust for the Indians. Since the beneficial interest of the Indians could be terminated only by or under authority of the Congress, the reservation of minerals to the United States contained in the patent issued under the Stockraising Homestead Act, *supra,* must be regarded as inuring to the benefit of the Indians. *Cf. Margaret Stepp,* 60 I. D. 174 (1948). In other words, legal title to the minerals underlying the patented land remained in the United States, and the beneficial title remained in the Indians. *Cf. Ownership of Minerals in Patented Lands Within the Uintah and Ouray Indian Reservation,* Utah, 59 I. D. 393 (1947).

The Mineral Leasing Act of 1920, pursuant to which the present application was filed, authorizes the issuance of oil and gas leases on "lands * * * owned by the United States." (30 U. S. C. 1952 ed., sec. 181.) * * * The land here involved is thus not land "owned by the United States," since any proceeds derived from the lease of the minerals must be deposited to the credit of the Indians of the Fort Peck Reservation. The Mineral Leasing Act of February 25, 1920, is therefore not applicable to the land embraced within the appellant's offer to lease, and the offer was properly rejected.

The surplus lands of the Fort Peck Indian Reservation were temporarily withdrawn from all forms of sale, disposal or leasing by order of the Secretary dated September 19, 1934. (54 I. D. 559, 563.) The purpose of the withdrawal was to enable the Bureau of Indian Affairs to give appropriate consideration to the matter of permanent restoration of the lands to tribal ownership, as provided by the Act of June 18, 1934, 25 U. S. C., 1952 ed., sec. 461 *et seq.*

By its terms, the withdrawal was to apply to "lands the proceeds of which, if sold, would be deposited in the Treasury of the United States for the benefit of the Indians." Since the Indians were the beneficial owners of the minerals reserved to the United States in patents issued pursuant to the Stockraising Homestead Act, *supra,* the withdrawal was effective as to those mineral rights, also. *Cf. Solicitor's Opinion,* M-36142 (October 29, 1952).

* * * * * * *

(8118-2)